

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

PRECISION AUTO SERVICES, INC.  
d/b/a MIDAS AUTO SERVICES EXPERTS

Employer<sup>1</sup>

and

CHARLES J. HANDLINE

Case 5-RD-1308

Petitioner

and

TEAMSTERS UNION LOCAL 326

Union<sup>2</sup>

REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION

The Employer provides automobile maintenance and repair services, and sells and distributes automobile parts to the public from its Wilmington, Delaware facility. The Union currently represents the employees in the following unit:

All regular full-time and part-time mechanic class one, mechanic class two, mechanic class three, mechanic class four, journeyman mechanic class five, and apprentice mechanic class six employed by the Employer at its 3425 Kirkwood Highway, Wilmington, Delaware facility, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

There are currently three employees in the bargaining unit. The parties stipulated that manager Earl Cook has the authority to effectively recommend discipline and that general

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> The Union's name appears as amended at hearing.

manager Ronald Reusch, has the authority to hire and fire employees. The parties stipulated, and I find, that Cook and Reusch are supervisors within the meaning of the Act.

On September 9, 2002, the Petitioner filed this petition pursuant to Section 9(c) of the National Labor Relations Act, seeking a decertification election among all technicians employed by the Employer. A hearing was held on September 23, 2002. The Union filed a post-hearing brief on October 2, 2002.

The only issue to be decided is whether there is a contract that blocks this petition.

The parties have had a collective bargaining relationship for approximately twenty years and have been parties to a series of collective-bargaining agreements. Prior to the expiration of the most recent contract, the Union sent a letter to the Employer dated December 11, 2001, serving “notice of [their] intent to change and/or modify the current labor agreement.” The parties stipulated that no letter was sent canceling or terminating the collective-bargaining agreement.

Article 40 of the most recent collective-bargaining agreement provides:

#### Section 1

This Agreement shall be in full force and effect from June 1, 1998 to and including February 28, 2002 and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

#### Section 2

Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to expiration of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such agreement.

The record established that the Employer has three facilities in Delaware, each of which has a separate collective-bargaining agreement with the Union. During negotiations at one of the other facilities, in May 2002, there was discussion involving this unit. At those negotiations, some unspecified terms and conditions of employment were agreed to which cover all three facilities. However, no collective-bargaining agreement was entered into.

The Union argues that in accordance with Article 40, Section 1 of the collective-bargaining agreement, because it never sent a notice to cancel the collective-bargaining agreement, the agreement automatically renewed for one year, thereby serving as a contract bar to the petition. The Petitioner and the Employer, contrary to the Union, contend that a contract bar does not exist.

I have carefully considered the evidence and the arguments presented by the parties on the above issue. For the reasons set forth below, I conclude there is no contract bar to the petition.

### **ANALYSIS**

When a petition is filed for a representation election among a group of employees who are covered by a collective-bargaining agreement, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds that the contract does exist and that the requirements are met, the contract is held a bar to an election. *Hexton Furniture Co.*, 111 NLRB 342 (1955). Certain collective-bargaining agreements have provisions for automatic renewal unless either party notifies the other of its desire to modify or terminate the contract. If no notification is given, the contract renews itself and constitutes a bar unless a timely petition is filed

before the beginning of the insulated period. If automatic renewal is forestalled, the situation is precisely the same as if the contract had no automatic renewal clause. In determining whether the contract has automatically renewed itself, the Board has found that any notice of a desire to negotiate changes received by the other party, immediately preceding the automatic renewal date provided in the contract, will prevent its renewal for contract bar purposes, unless there is a provision or agreement for the continuation of the existing contract during negotiations. *Bridgestone/Firestone, Inc.*, 331 NLRB 205 (2001). See also *KCW Furniture Co.*, 247 NLRB 541 (1980).

In *Bridgestone/Firestone*, the Board found that absent express contractual language specifically providing that a reopener will not terminate a collective-bargaining agreement, such as is found in the agreement between the parties in *KCW Furniture*, a reopener request will void the automatic renewal provision as to the subjects for which bargaining was sought. The Board further found that where a party seeks an expansive reopener on all mandatory subjects of bargaining, any unopened contract provisions would be insufficient to serve as a contract bar. *Id.* at 208.

The language in Article 40 in the collective-bargaining agreement in this case closely mirrors the language in Article XXI of the contract in *Bridgestone/Firestone*. The Union's open-ended reopener request in the instant matter is similar to the union's expansive reopener request in *Bridgestone/Firestone*. The Board there held that the union's request terminated the agreement. Accordingly, I find that based on established Board precedent, the Union's December 11, 2001, letter requesting that the contract be reopened, without limiting the scope of that request, blocked the automatic renewal provision, and therefore, no contract bar exists.

### CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.<sup>3</sup>
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>4</sup>
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time mechanic class one, mechanic class two, mechanic class three, mechanic class four, journeyman mechanic class five, and apprentice mechanic class six employed by the Employer at its 3425 Kirkwood Highway,

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<sup>3</sup> I have reviewed the rulings made by the hearing officer in this matter limiting certain testimony and find that those rulings were commensurate with the hearing officer's duty to inquire fully into all matters in issue and to obtain a full and complete record. The hearing officer properly permitted offers of proof for testimony that was excluded. After reviewing the entire transcript and exhibits, including the offers of proof, I have concluded that the hearing officer's rulings excluding testimony proffered by the Union was not a denial of due process, and, accordingly, deny the Union's request for a new hearing.

<sup>4</sup> During the past twelve months, the Employer, a Delaware corporation, derived gross revenues in excess of \$500,000 and received goods and supplies valued in excess of \$5,000 directly from points outside the State of Delaware.

Wilmington, Delaware facility, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **TEAMSTERS UNION LOCAL 326**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **OCTOBER 9, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at **(410) 962-2198**. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **October 16, 2002**. The request may **not** be filed by facsimile.

Dated: OCTOBER 2, 2002

WAYNE R. GOLD

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Wayne R. Gold, Regional Director,  
National Labor Relations Board  
Region 5

**Classification Index**  
347-4010-9000